

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

10-CR-188

JAVIER SANTIAGO,

Defendant.

DECISION AND ORDER

The defendant has once again requested that reconsideration be given to this Court's original Order of Detention (Docket No. 09-M-216, Document #95) which Order was reaffirmed by this Court's Order denying the defendant's first motion seeking reconsideration of the Order of Detention (Docket No. 10-CR-188, Document #189). The Court has considered the defendant's proffer in support of his motion made July 14, 2010, as well as the Government's opposition thereto as reflected in Docket No. 10-CR-188, Document #177. Particular focus has been given to the claims of counsel for the Government as set forth in paragraphs 6, 7 and 8 of the Government's response in opposition to the defendant's motion. In considering the totality of the circumstances herein, including this Court's prior Orders, I find that the defendant has not presented a change in circumstances that warrant a nullification of this Court's original Order of Detention. Therefore, the defendant's motion is DENIED.

It is hereby **ORDERED** pursuant to 28 U.S.C. § 636(b)(1) that:

This Decision and Order be filed with the Clerk of Court.

ANY OBJECTIONS to this Decision and Order must be filed with the Clerk of this Court within fourteen (14) days after receipt of a copy of this Decision and Order in accordance with the above statute, Fed. R. Crim. P. 58(g)(2) and Local Rule 58.2.

The district judge will ordinarily refuse to consider *de novo*, arguments, case law and/or evidentiary material which could have been, but were not presented to the magistrate judge in the first instance. See, e.g., *Paterson-Leitch Co., Inc. v. Massachusetts Municipal Wholesale Electric Co.*, 840 F.2d 985 (1st Cir. 1988). **Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Judge's Order.** *Thomas v. Arn*, 474 U.S. 140 (1985); *Wesolek, et al. v. Canadair Ltd., et al.*, 838 F.2d 55 (2d Cir. 1988).

The parties are reminded that, pursuant to Rule 58.2 of the Local Rules for the Western District of New York, "written objections shall specifically identify the portions of the proposed findings and recommendations to which objection is made and the basis for such objection and shall be supported by legal authority." **Failure to comply with the provisions of Rule 58.2, or with the similar provisions of**

**Rule 58.2 (concerning objections to a Magistrate Judge's Decision and Order),
may result in the District Judge's refusal to consider the objection.**

DATED: Buffalo, New York
August 12, 2010

**s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge**